

**FINAL REPORT  
OF THE  
COMMISSION ON COURTS**



**Indiana Legislative Services Agency  
200 W. Washington St., Suite 301  
Indianapolis, Indiana 46204-2789**

**November 2002**

# **INDIANA LEGISLATIVE COUNCIL**

## **2002**

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**Chairman**

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**Senator Robert Garton**

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**Executive Director**  
**Legislative Services Agency**

## **Commission on Courts**

### **Membership Roster**

#### **Senators**

Richard Bray, Chair  
Martinsville

William Alexa  
Valparaiso

David Ford  
Hartford City

Timothy Lanane  
Anderson

#### **Representatives**

Ralph Ayres  
Chesterton

Robert Kuzman  
Crown Point

Kathy Richardson  
Noblesville

Dale Sturtz  
LaGrange

#### **Lay Members**

Tim Curley  
Terre Haute

David Lewis  
Jeffersonville

Chief Justice Randall Shepard  
Indianapolis

Judge Ernest Yelton  
Brazil

Sarah Taylor  
Indianapolis

#### **Legislative Services Agency Staff**

Mark Goodpaster, Fiscal Analyst  
Andrew Roesener, Staff Attorney

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Commission can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

## **FINAL REPORT**

### **Commission on Courts**

#### **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

In 1991, the Indiana General Assembly enacted IC 33-1-15-7 directing the Commission to annually do the following:

- (1) Review and report on all requests for new courts or changes in jurisdiction of existing courts.
- (2) Conduct research concerning requests for new courts or changes in jurisdiction of existing courts.
- (3) Conduct public hearings throughout Indiana concerning requests for new courts or changes in jurisdiction of existing courts.
- (4) Review and report on any other matters relating to court administration that the Commission determines appropriate, including court fees, court personnel, salaries of court officers and personnel, jury selection, and any other issues relating to the operation of the courts.

In 2002, the Legislative Council made no additional assignments to the Commission.

#### **II. INTRODUCTION AND REASONS FOR STUDY**

The legislative branch and the judiciary are separate and co-equal branches of government. The Commission on Courts was established to give the General Assembly adequate time to study legislative proposals that will affect the judicial branch.

#### **III. SUMMARY OF WORK PROGRAM**

The Commission met three times during the 2002 interim.

At its first meeting, the Commission reviewed the outcome of legislation that it recommended during the 2002 General Assembly. The members also reviewed the need for new courts in Howard and Hamilton Counties and reviewed the need for an additional magistrate in Madison County.

At the second meeting, the Commission

- Reviewed the efforts of the Indiana Supreme Court to establish a statewide court information system;
- Examined proposals from the Indiana Judges Association to increase the salaries of judges;
- Reviewed how the Indiana Judicial Conference is updating the weighted caseload system;
- Heard testimony about why Vigo and DeKalb Counties need additional courts and why

- Owen and Pike Counties need additional magistrates;
- Heard testimony on the concerns of a judge in Vigo County who wishes to purchase additional service credits from the Judges' Retirement Fund; and
- Listened to testimony concerning the state assumption of the total salaries of juvenile court magistrates.

At the third and final meeting, the Commission heard testimony concerning:

- The effect of increased postage rates on the budgets of the clerks of the circuit court;
- Issues related to the Judges' Retirement Fund;
- Alternative proposals to increase per diem compensation for senior judges;
- Proposed legislation to reauthorize Allen County to fund an alternative dispute resolution program; and
- Testimony concerning the authority of courts to order payments to recover the costs of genetic tests in paternity cases.

The Commission also adopted its recommendations and a final report at this meeting.

#### **IV. SUMMARY OF TESTIMONY**

**Judges' Retirement Fund Issues:** Judge Barbara Brugnau and Representative Clyde Kersey testified concerning whether judges appointed by the Supreme Court on "*Pro Tempore*" basis under Trial Rule 63 B should be eligible to purchase service credits in the Judges' Retirement Fund. Commission members also examined whether a provision which restricts retired judges who are currently receiving Judges' Retirement Fund benefits from being employed in any other state-paid job besides senior judges and judge *pro tempore*.

**Senior Judge Issues:** Chief Justice Shepard discussed whether the salaries of senior judges should be increased to match the salaries of senior prosecuting attorneys.

**Alternative Dispute Resolution Program:** Magistrate Thomas Felts, Allen Circuit Court, Judge Dan Donahue, Jane Siegel, and Paul Leonard testified to support reauthorizing the law that created the alternative dispute resolution program in Allen County.

**Additional Court in Howard County:** Representative Ron Herrell and attorneys James Martin and William Menges Jr. testified concerning the need for a new court in Howard County.

**Additional Courts in Hamilton County:** Representative Kathy Richardson testified concerning why Hamilton County needs a new court.

**Additional Court in Vigo County:** Representative Clyde Kersey testified why Vigo County needs a new court.

**Additional Court in DeKalb County:** Judges Kevin Wallace and Paul Cherry testified why DeKalb County needs a new court.

**Additional Magistrate in Madison County:** Senator Tim Lanane testified why Madison County needs a magistrate.

**Additional Magistrate in Owen County:** Circuit Court Judge Frank Nardi testified why a small claims referee needs to be converted into a magistrate position in Owen County.

**Additional Magistrate in Pike County:** Circuit Court Judge Lee Baker testified why a small claims referee needs to be converted into a magistrate position in Pike County.

**Salaries of Judicial Officers:** Judge Thomas Milligan, President of the Indiana Judges Association, testified why the salaries of judicial officers in Indiana needed to be increased.

**Status of the Judicial Technology and Automation Project:** Justice Frank Sullivan described the progress of the Indiana Supreme Court in implementing a statewide court information system.

**The Status of Court Fees:** Mark Goodpaster, staff for the Commission on Courts, presented reports concerning three aspects of court fees.

**Alternative Dispute Resolution:** Magistrate Thomas Felts, Allen Circuit Court, testified on the status of the alternative dispute resolution program in Allen County.

**Adequacy of Court Fees to Recover Postage Costs for Counties:** Representative Kathy Richardson testified that the county share of court fees may no longer be recovering the cost of postage in many civil cases.

**Authority to Recover the Costs of Genetic Tests in Paternity Cases:** Judge Yelton brought this issue to the Commission's attention at the final meeting.

**Reauthorizing the Statute on the Commission on Courts:** Senator Bray brought this issue to the Commission's attention at the final meeting.

## **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

### **Eligibility of Judges Appointed Under Trial Rule 63 B to Participate in Judges' Retirement Fund:**

**Findings:** Under current law, individuals who are appointed as trial court judges on a *pro tempore* basis by the Indiana Supreme Court under Trial Rule 63 B may not participate in the Judges' Retirement Fund even though they receive the same salary and benefits and are bound by the same ethical obligations as all other elected and appointed judges.

**Recommendation:** The Commission recommended legislation be introduced to allow these individuals to purchase service credits from the Judges' Retirement Fund.

### **Restrictions on State Employment of Retired Judges Receiving Pension from the**

### **Judges' Retirement Fund:**

**Findings:** Under either IC 33-13-9.1-4 (the 1977 Plan) or IC 33-13-10.1-6 (the 1985 Plan), retirees who receive pension payments from the Judges' Retirement Fund may only work in state government as senior judges or judges *pro tempore*. It was noted that when judges retire, they may be interested in pursuing other types of employment in Indiana state government.

**Recommendation:** The Commission recommended legislation be introduced to remove these restrictions from the statute.

### **Senior Judge Issues:**

**Findings:** Under IC 33-4-8-5, senior judges may work a maximum 100 days and are paid \$50 from the state General Fund per day to perform as a judge. In contrast, senior prosecuting attorneys, created by P.L. 72 in 2002, are county-paid positions that may have per diem salaries that may be as high as \$346 per day (\$90,000 annual salary ÷ 260 days) less the amount they receive from the Prosecuting Attorneys Retirement Fund.

**Recommendation:** The Commission members voted to recommend language to the General Assembly so that the salary of a senior judge would be \$50 per diem for the first 30 days. For each day in excess of 30 days a senior judge would receive a combination of:

- The compensation paid to a senior judge under the senior judge chapter; and
- The retirement benefits that the person appointed as a senior judge is receiving or entitled to receive.

The combined income from these two sources would not be permitted to exceed the minimum per diem compensation to which a full-time trial court judge is entitled under IC 33-13-12 (Currently \$90,000).

### **Status of Judicial Technology and Automation Project:**

**Findings:** Funding for the Judicial Technology and Automation Project comes from the Automation and Record Keeping Fee created by the General Assembly in 2001 and increased in 2002. The Supreme Court has also requested an additional appropriation from the State Pay Phone Fund for the 2004-2005 biennium.

**Recommendation:** The Commission endorsed the Supreme Court's request to the State Budget Committee for an additional appropriation from the State Pay Phone Fund of \$3 million for each fiscal year in the next biennium.

### **Additional Courts in Hamilton, Howard, Vigo, and DeKalb Counties:**

**Findings:** Based on the 2001 weighted caseload statistics prepared by the Division of State Court Administration of the Supreme Court, Hamilton County needs three additional courts, Vigo County needs three new courts, Howard County needs four new

courts, and DeKalb County needs 1.5 additional courts. The estimated cost to the state for each new court would be \$137,677.

**Recommendation:** The Commission recommended legislation be introduced to add four new courts, one new court for each county.

#### **Additional Magistrates in Madison and Owen Counties:**

**Findings:** The need for additional court state-paid officers in Madison and Owen Counties can be justified by the weighted caseload statistics and other factors. The added cost for a magistrate for Madison County would be \$72,000 plus benefits. In Owen County, where there is only one trial court judge, the magistrate could substitute for a state-paid small claims court referee and increase flexibility for the circuit court judge. The additional cost to the state would be \$24,500 because the small claims referee currently receives \$47,500 from the state.

The Commission did not find that the weighted caseload statistics supported the need for an additional magistrate in Pike County.

**Recommendation:** The Commission voted to recommend legislation to add a new magistrate each for Madison and Owen County. At the same time, the Commission recommends that the small claims referee serving in DeKalb Circuit Court under IC 33-5-10.8-17 be eliminated if the position of magistrate is created. For Owen County, the Commission recommends that the small claims referee no longer be funded.

#### **Conversion of County-Paid Juvenile Magistrates to State-Paid Magistrates:**

**Findings:** Under current law, juvenile court magistrates are appointed by the judge of the circuit court in counties with a population exceeding 50,000. They work full-time and receive a salary of \$72,000, of which \$41,393 is paid by the county. Seventeen juvenile court magistrates currently work in nine counties. The added costs for the state would be \$829,915. The savings for these nine counties are estimated to be \$703,681.

**Recommendations:** The Commission voted to recommend legislation in which the state would pay the portion of the salary currently paid by the counties.

#### **Postal Rates and Court Fees:**

**Findings:** The Commission discussed the effects that the recent increase in postal rates for certified mail would have on the budgets of the clerks of the circuit court and whether additional fees are needed to recover some of these costs.

**Recommendation:** The Commission made no recommendations about how to recover a greater portion of the mailing costs associated with the recent postal rate increases.

#### **Statutory Authority to Impose Fees For Genetic Testing in Paternity Cases:**

**Findings:** The state or county pays the initial cost of genetic testing in paternity cases and recovers the costs from an individual found to be the biological parent of the child.



Almost all counties now use mouth swabs to obtain the genetic material to perform these tests. Under IC 31-14-6-4, the state and counties may recover the costs when blood tests are performed.

**Recommendation:** The Commission voted to recommend that language be added to IC 31-14-6-4 so that the costs for genetic tests also may be recovered from the persons who are determined to be the biological parent.

### **Judicial Salaries:**

**Findings:** The Commission makes the following findings:

- (1) Judicial salaries are set by statute.
- (2) The statute setting judicial salaries has not been amended since 1997.
- (3) An increase in the salaries of judges is needed to continue to attract high quality candidates for these positions.

**Recommendations:** The Commission recommends the following by a 9 to 1 roll call vote:

- 1) Salary schedules for each level of court

Level	Current Salary	Recommended Salary
Trial Court	\$90,000	\$109,200
Court of Appeals	\$110,000	\$130,200
Supreme Court	\$115,000	\$135,200

2) A permanent law providing that the judiciary be included in the state's employee contingency plan allowing the judiciary to receive salary increases with other state employees in years when the legislature does not enact pay raises for the judiciary.

3) A salary commission to address the needs of all statewide elected officials, legislators, and the judiciary.

### **Alternative Dispute Resolution Program in Allen County:**

**Findings:** P.L.107-2000 created the Alternative Dispute Resolution Program in Allen County. The legislation that created this program expired July 1, 2002.

**Recommendation:** The Commission recommends the following:

- Reauthorizing the Allen County alternative dispute resolution (ADR) pilot project for parties contemplating divorce;
- Permitting the ADR project to include nonbinding arbitration;

- Allowing senior judges to serve as a domestic relations mediator; and
- Permitting a county other than Allen County to operate an ADR pilot project if the county: (1) uses a plan submitted to the Judicial Conference; and (2) obtains approval by a majority of the judges in the county exercising jurisdiction over domestic relations and paternity cases.

**Reauthorization of the Commission on Courts:**

**Findings:** IC 33-1-15-8 specifies that the authorizing statute for the Commission on Courts expires on June 30, 2003.

**Recommendation:** The Commission recommends legislation be introduced to extend this expiration date to June 30, 2007.

## **WITNESS LIST**

### **Need for Additional Courts or Magistrates:**

Representative Ron Herrell  
Representative Clyde Kersey  
Representative Kathy Richardson  
Senator Tim Lanane  
Hon. Paul Cherry, DeKalb Circuit Court  
Hon. Kevin Wallace, DeKalb Superior Court  
Hon. Frank Nardi, Owen Circuit Court  
Hon. Lee Baker, Pike Circuit Court  
James Martin, Attorney at Law  
William Menges, Attorney at Law

### **Judicial Technology and Automation Project:**

Justice Frank Sullivan

### **Judicial Salaries:**

Hon. Thomas Milligan, Montgomery Circuit Court, President, Indiana Judges Assoc.

### **Weighted Caseload Study**

Jeff Bercovitz, Indiana Judicial Center

### **Juvenile Court Magistrates**

Senator William Alexa

### **Alternative Dispute Resolution**

Magistrate Thomas Felts, Allen Circuit Court  
Hon. Daniel Donahue, Clark Circuit Court  
Paul Leonard, Chair of the Family and Juvenile Law Section of the Indiana State Bar Association  
Jane Siegel, Executive Director of the Indiana Judicial Center

### **Judges' Retirement Fund Issues:**

Hon. Ernest Yelton, Clay Circuit Court  
Hon. Barbara Brugnau, Vigo Superior Court #5  
Representative Clyde Kersey

### **Senior Judge Issues:**

Chief Justice Randall Shepard

### **Recovering the Costs of Genetic Tests:**

Senator Richard Bray